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ABSTRACT

Specific instances in which federal legislation and regulations function to impede state/local effectiveness are grouped under eight major issues: (1) lack of coordination among federal programs and agencies; (2) regulations established by federal agencies exceed authority granted in statutes; (3) federal policies that prescribe methodology or programs rather than specify results of programs impede state and local professionals; (4) federal information reporting is sometimes required without qualification as to need and purpose; (5) approval and funding of programs are delayed by inefficient administrative practices; (6) federal policies and regulations result in administrative confusion and inefficient state/local practices; (7) in some programs federal agencies deal directly with school districts, bypassing state education agencies; and (8) audits conducted by federal agencies are sometimes late and not consistent with the policies for planning and conducting programs. Remedies for the problems are recommended in terms of the development of realistic regulations and improved guidelines for education legislation. (Author/MLF)

IMPEDIMENTS TO EFFECTIVE FEDERAL-STATE RELATIONS

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IMPEDIMENTS TO EFFECTIVE FEDERAL-STATE RELATIONS

The Council of Chief State School Officers

Annual Legislative Meeting

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PREFACE

During the Summer, 1976 meeting of the Council of Chief State School Officers (CCSSO), a decision was made to undertake the documentation of the difficulties local school districts and state departments of education are experiencing with the ever-increasing burden of Federal program requirements. In September, 1976, a study group representing members of the CCSSO Federal Liaison Representatives, Study Commission, and Committee on Evaluation and Information Systems (CEIS) met for three days in Washington to investigate the problem and report their findings.

Rather than doing a general survey of the impediments existing in federal education legislation, the study group focused its attention on an in-depth analysis of selected federal programs judged to be of highest priority: ESEA Title I, ESEA Title IV - Consolidation, Education for All Handicapped, and mandated studies and reports. The study group devised a work plan geared to finding problems with legislation and regulations in terms of governance, excessive paperwork, feasibility of administration, and prescriptive methods rather than results oriented programs. The study group also reviewed, as part of its work plan, similar surveys of the problem, such as the 1976 report prepared for the National Governors' Conference and the HEW Region X Report, "Red Tape in the Federal Supermarket."

Subcommittees were appointed to separately study each of the four areas of concentration. Each Subcommittee submitted a written report of its findings according to the given work plan. These reports were then

organized by the CCSSO staff and a draft report was prepared and distributed to all Chief State School Officers and their staff members for reaction and comment.

Suggestions received from the Chiefs were incorporated into recommended remedies for the problems in terms of the development of realistic regulations and improved guidelines for education legislation.

I

INTRODUCTION

The tenth amendment to the U.S. Constitution states that "The powers not delegated to the United States by the Constitution, not prohibited by it to the States, are reserved to the States respectively, or to the people". This is the clause that reserves education as a responsibility of the States.

Since the introduction of the Elementary and Secondary Education Act of 1965, many education programs authorized in Federal legislation have grown out of overwhelming needs which declining State resources cannot meet. Congressional initiative is greatly appreciated, and its leadership is commendable in these areas.

Section 404 (b) of the P. L. 94-482, the Education Amendments of 1976, clearly defined the scope of Federal involvement:

> No provision of any applicable program shall be construed to authorize any department, agency, officer, or employee of the United States to exercise any direction, supervision, or control over the curriculum, program of instruction, administration, or personnel of any educational institution, school, or school system, or other printed or published instructional materials by any education institution or school system, or require the assignment or transportation of students or teachers in order to overcome racial imbalance.

However, in the implementation of these programs, States are experiencing increasing Federal intervention in the day-to-day operations of their departments.

Yet, in practice, this Congressional mandate is not always heeded. Former USOE Commissioner T.H. Bell was recently quoted in the October, 1976 Phi Delta Kappan concerning the excesses of the Federal role:

> The Federal government must guarantee certain rights, and in so doing, it should specify the ends of education and provide the financial support to meet those ends. What it shouldn't do--- and is starting to -- is specify the means ... Congress ... became a super school board and spelled out how States and local districts were to achieve the ends.

Ewald B. Nyquist, Commissioner of Education for New York State, further explained the Federal-State relationship in education.

> Responsibility for providing public education traditionally has rested with the States and their local jurisdictions. Historically, as States have accepted Federal assistance, a contractual relationship has developed between State and Federal partners. We view with alarm increasing interpretation of Federal powers as unlimited prescriptive license under the contract, impinging upon States' provision for free public education.
>
> A number of historic U.S. Supreme Court decisions support the reserved powers of States in the field of public education. In Brown v. Board of Education (1954) the U.S. Supreme Court stated that "education is perhaps the most important function of state and local governments". In 1972, the Court recognized that "providing public schools ranks at the very apex of the function of a state". (Wisconsin v. Yoder)
>
> The provision of a free public education for all citizens is a State constitutional priority. Public education is mandated by State constitution in 48 of the 50 states, and 49 states have compulsory attendance laws . . .
>
> However, it is widely interpreted that Congress has the authority to legislate for education programs pursuant to the Spending Power (provided for the "general welfare of the United States") in Art. 1, Sec. 8 of the U.S. Constitution, and pursuant to the Equal Protection Clause of the Fourteenth Amendment.

In an effort to guard against poor management on the part of a few State agencies, the notion that the national government should be the prime educator has evolved. Federal mistrust of the States' and school districts' ability to carry out educational goals has resulted in Federal education policies based on the lowest common denominator of State/local ability.

Based on a belief that diversity in education approaches is wholesome and insures that education programs are appropriate to the needs of a particular state, we have studied some major problem areas. Examples are cited to document how existing legislative requirements and resulting regulations impede effective implementation of educational programs at local and state levels.

This report represents a genuine effort on the part of the Council of Chief State School Officers to suggest ways in which states, Congress, Federal agencies, and local school districts can cooperate more fully in providing the best possible educational opportunities for children and youth, and to strengthen the capabilities of local school districts to deliver effective instructional services.

ANALYSIS OF THE MAJOR ISSUES

A number of specific instances in which federal legislation and regulations function to impede state/local effectiveness can be cited. These are grouped under eight major issues:

- Lack of coordination among Federal programs and agencies hinders effective implementation of programs;
- Regulations established by Federal agencies exceed authority granted in statutes;
- Federal policies that prescribe methodology or programs rather than specify results of programs impede professionals of state and local agencies in delivering effective service to their clients;
- Federal information reporting is sometimes required without qualification as to need and purpose;
- Approval and funding of programs are delayed by inefficient administrative practices;
- Federal policies and regulations result in administrative confusion and inefficient state/local practices;
- In some programs Federal agencies deal directly with school districts, bypassing state education agencies;
- Audits conducted by Federal agencies are sometimes late and not consistent with the policies for planning and conducting programs.

LACK OF COORDINATION AMONG FEDERAL PROGRAMS AND AGENCIES HINDERS EFFECTIVE IMPLEMENTATION OF PROGRAMS

Many federal programs enacted over several decades have no doubt added strength to local education agencies' ability to provide effective instruction to their students. However, these programs have been enacted and administered one at a time, with the result that coordination has suffered in many cases. Such lack of coordination minimizes local and state education agencies' ability to implement programs effectively. Several examples can be cited to illustrate this problem.

Example 1: Because of the categorical/consolidation phase-in during the first year under ESEA, Title IV in 1974, implementation of programs was impeded by the dual administrative burden placed on SEA's. While the law required consolidation of programs, the Office of Education remained organized under the former categorical programs. All reports and records had to be maintained in full for each program. These duplicated reports went to the same offices, were evaluated by the same staff, and allocations were made in an identical manner. A number of states have reported that when they believed their plans were in approvable form, a program officer from another division in the Office of Education would indicate the need for further change.

Example 2: Regulations and methods of administration vary among bureaus and program officers within the U.S. Office of Education. For instance,

Section 613 (a) (2) of P. L. 94-142 (Education for All Handicapped) requires that funds received under any other Federal program relating to assistance for the education of handicapped children be used in a manner consistent with providing "a free appropriate public education", as defined in P. L. 94-142. Programs authorized under other legislation such as ESEA, Title I, and the Vocational Education Act are not administered by the Bureau for Education of the Handicapped as is P. L. 94-142, but instead are administered by other bureaus within the Office of Education. The SEA cannot be expected to administer handicapped programs on the state level in a consistent manner when inconsistencies exist on the Federal administrative level.

Example 3: Numerous programs are aimed at the same population of children: ESEA-I (Regular), ESEA I (Migrant), ESEA-VII, Education for the Handicapped Act (LLD students), Vocational Education Act (disadvantaged students), ESEA-IV-C (15% targeted upon special education students), Headstart, and P. L. 93-874 (low rent housing provisions). Differences among policies and regulations promulgated by federal agencies make it difficult for states and school districts to integrate these efforts and provide a comprehensive program for this target population.

REGULATIONS ESTABLISHED BY FEDERAL AGENCIES EXCEED AUTHORITY GRANTED IN STATUTES

Recognizing that conditions vary considerably among the fifty states, it appears that the Congress has written certain sections of legislation in broad terms in order to allow state and local districts to adapt the programs to their own situations. In other cases, federal laws are vague and lend themselves to administrative interpretation. Unfortunately, in both situations federal agencies have written regulations which exceed the intent and authority of law.

Example 1: ESEA, Title I, Section 141 (a) (3) (C) states that: "State and local funds will be used in the district of such agency to provide services in project areas which, taken as a whole, are at least comparable to services being provided in areas in such districts which are not receiving funds under this Title." Regulations concerning this (s. 116a.26) are overly prescriptive and impose undue annual paper submission by LEA's. The State education agency is required to receive comparability reports from the local education agencies for all schools unless specifically excluded. The SEA should be given the responsibility for formulating requirements for comparability and enforcing its regulation on LEA's.

An example of excessive record keeping requirements is well illustrated by s. 116a. 26(m) requiring an LEA to keep records by individual schools on enrollment, total salary, portion based on longevity for each

part-time staff member, worksheets on full-time staff, amount of non-federal funds for full-time and part-time staff, the amount for textbooks, library resources, and the instructional materials actually available during current school year. The records shall be filed and indexed and maintained as to be readily reviewed ... .

And in s. 116.26(n) - State Agency Submission: This regulation requires the SEA to submit copies of LEA comparability reports directly to the USOE when

1. LEA's are involved in national samples for research; and
2. If an LEA's initial comparability report is found by the SEA not to be in compliance, the revised report must be submitted to USOE (Section s. 116a.26(n) (2), (3), and (4).)

Example 2: P. L. 81-874, Impact Aid, provided federal funds for children living in federal low-rent housing in lieu of taxes not collected. Final regulations are not yet out, but the state education agency is required to receive, review, monitor, and certify the plans of school districts, all without any administrative funds to do this. Yet, the money will come directly to the school district from the U.S. Office of Education. If the state education agency does not cooperate in the ways described above, school districts will not be funded.

Example 3: While the law does make provision for taking into account the number of high cost children in the distribution of Title IV-B funds, the regulations exceed the law by requiring not only the distribution but also the expenditure of these funds for high cost students.

Example 4: The lack of clarity of the language in certain parts of Title IV, ESEA, appears to have resulted in the Office of Education exceeding the authority of the law in writing regulations. S. 134.101 of Consolidation regulations prescribe administrative procedures regarding avoidance of separate classes that cannot be found in the public law:

> s. 134.101 Avoidance of separate classes. Any project to be carried out in public facilities which involved joint participation by children enrolled in private schools and children enrolled in public schools shall include such provisions as are necessary to avoid the separation of participating children by school enrollment or religious affiliation (20 U.S.C. 1806 (a)).

Example 5: An Example of excessive detail in federal regulations can be found in Section 504 of the Rehabilitation Act of 1973, which consists of one sentence. The proposed regulations resulting from this sentence consisted of 20 pages (Federal Register, July 16, 1976, pp. 29548-29567). This is a clear example of excessive volume of regulations used to interpret Federal law.

FEDERAL POLICIES THAT PRESCRIBE METHODOLOGY OF PROGRAMS RATHER THAN SPECIFY RESULTS OF PROGRAMS IMPEDE PROFESSIONALS OF STATE AND LOCAL AGENCIES IN DELIVERING EFFECTIVE SERVICE TO THEIR CLIENTS

The Council has become aware of another disturbing pattern in Federal education legislation in that in some cases the methods of administration have become more important than the solutions to problems for which these programs are designed. A number of instances can be cited.

Example 1: The guidelines promulgated by the Office of Civil Rights, (connected with the Lau versus Nichols decision) essentially prescribe that bilingual education is the only instructional method to be used with children of limited English-speaking ability. This discourages school districts from using other methods of proven worth with this population.

Example 2: The Education for All Handicapped Sec. 613 (a) (3) requires the state plan to set forth detailed procedures, to assure all personnel are appropriately and adequately trained. The requirement in federal regulations of specific methods of personnel development based on national standards impedes the development of worthwhile programs for personnel training tailored to the needs of each state.

Example 3: The Education for All Handicapped Act, Sec. 612 (4) requires each LEA in maintaining records of the individualized education program to contain specific information as detailed in the law. States are to establish procedures to educate all handicapped children in the "least restrictive

alternative" (Sec 612 (5)). The law also outlines specific processes to guarantee procedural safeguards (Sec. 615). While the need for de-institutionalizing handicapped children and providing due process is recognized, states should be given more flexibility in determining how these goals shall be carried out.

In addition, the provisions in the Education for All Handicapped Act have literally outlined the method and organization by which state departments implement education for every handicapped child in the nation.

> (6) The State educational agency shall be responsible for assuring that the requirements of this part are carried out and that all educational programs for handicapped children within the state, including all such programs administered by any other state or local agency, will be under the general supervision of the persons responsible for educational programs for handicapped children in the state educational agency and shall meet education standards of the state educational agency.

Example 4: ESEA, Title I, Sec. 141 (a) (12) requires in the case of projects involving the use of education aides, that the LEA "set forth well developed plans" for training aides along with professional staff whom they are assisting. Many SEA's already have long-standing training components, many of which were developed through the Education Professions Development Act. These are still being utilized effectively in many states and this new methodology serves no purpose.

Example 5: In legislation such as ESEA, Title IV, "Consolidation", and ESEA Title I, the establishment of state and local advisory councils have

become an additional layer of government rather than a supportive mechanism. By specifying the composition of the councils, delineating specific functions of these groups, and numbers of meetings to be held, and stipulating staff and budget requirements, the federal government has gone well beyond the scope of a reasonable role for advisory bodies -- that is, to advise -- and have therefore created unnecessary administrative problems for state and local agencies.

S. 432 (a) (3) of the Title IV regulations deals with internal allocations of state agency resources. The advisory council is charged under Title IV to advise in the allocation of these resources and to evaluate their effectiveness. It is the legal responsibility by state statute of the State Board of Education and/or the chief state school officer to determine allocation of agency operational resources under ESEA, Title IV. The advisory council is given the opportunity and resources to hire its own staff, which appears to contradict the very purpose of an "advisory" as opposed to "governing" group.

This is also true of some Vocational Education State Advisory Councils which employ professional staff with Federal funds to oversee how state education agencies should operate their programs. In the recently passed renewal of the Vocational Education Act (P. L. 94-482), the Advisory Council not only is authorized to employ professional staff, contract for services necessary to carry out its evaluation function independent of programmatic and administrative control by State boards, agencies, and individuals, but also choose its own fiscal agent.

By allowing these advisory councils to evaluate the effectiveness of programs and projects assisted under the state plans, these extra-legal bodies are undermining the legal responsibility of state education agencies. However, there are no provisions in the legislation to guard against unwarranted interference by advisory councils in the operation of state agencies.

In a number of cases, advisory councils appear to have had the net effect of fragmenting the program in each case from the whole SEA educational context because criteria which will ensure that an advisory council for a particular program contributes to coordination of that program are notably absent.

Example 6: Though the Bureau of Education for the Handicapped has not published their final regulations at this writing, they recently gave state representatives an opportunity to comment in person on those proposed. While this opportunity was appreciated, some of the examples in this paper illustrate the underlying dual cause of most regulations' difficulties -- either imprecise language in the public law with no legislative history, or overly prescriptive language in the public law which leaves little room for flexibility.

Sections 612 and 613 of P. L. 94-142 are overly prescriptive and establish Federal priorities for education of the handicapped to such a degree as to limit State and local prerogatives. The regulations amplify this lack of flexibility with a laundry list of requirements for the annual

program plan. Among others, the regulations dictate timelines for "Right of Education Policy"; full educational opportunity goal data on handicapped children, facilities, personnel, and services; priorities; identification, location, and evaluation; procedural safeguards, least restrictive alternative; state responsibility for all education programs conducted by other agencies; and direct services provided by state education agencies.

Where the public law outlines several goals for the governance of programs, the scope of the regulations regarding the annual program plan, remove almost all discretion to set their own standards and allow for only one instructional approach. The regulations outline services to be provided regardless of contrary existing state law.

After molding state programs in this way, the legislation requires local education agencies to conform to the state plan before SEA's can approve their programs. In other words, the federal government must approve the state application before the state can approve a local application.

Example 7: Rather than acknowledge that each state knows its greatest needs, some federal education legislation has ennumerated not only the allocation formula to individual states but also has prescribed the method by which states make grants to LEA's. This clearly restricts the flexibility of chief state school officers to target funds where they are needed, not mandated by Federal statutes which override the actual

state experience.

In Title I, ESEA, for instance, section 103 (a) (b) and (c) established the methods by which the federal government shall determine the entitlements of a state and the county entitlement within a state. This process does not take into account the comparative capability from state and local funds of one school district to another within a state.

Example 8: In the proposed rules for the Education of All Handicapped Act, state agencies are required to include in their program plan all public comments received and the action taken as a result. The authotizing legislation did not require this reporting procedure, and the discretion of the states in developing their plans according to their needs is being violated by the Bureau of Education for the Handicapped. Each state is qualified to evaluate and understand the validity of comments from within its jurisdiction and to determine whether they are appropriate to the plan.

Example 9: The federal government has tied the hands of state departments by requiring specific data from local school districts in the submission of reports and plans to the states. It makes no sense to dictate to states extensive criteria to be used to approve local applications. In Part D, Sec. 141 (a) of Title I ESEA the law requires an SEA to mandate 14 criteria from LEA's plus a comparability report before the state can approve an application.

Sec. 141A. (a) To the extent consistent with the number of educationally deprived children in the school district of the local education agency who are enrolled in private elementary and secondary schools, such agency shall make provision for including special educational services and arrangements (such as dual enrollment, educational radio and television, and mobile educational services and equipment) in which such children can participate and meeting the requirements of clauses (A) and (B) of paragraph (1) subsection (a) of section 141, paragraph (2) of subsection (a) of such section, and clauses (A) and (B) of paragraph (3) of subsection (a) of such section 141.

Example 10: In the Right-to-Read program, under the Cooperative Research Act, the requirement by the U.S. Office of Education that each state have a Right-to-Read coordinator directly responsible to the chief state school officer is viewed as an unwarranted prescription of the way in which the state education agency should be organized. Federal statutes require a state director for vocational education. Any such invasions of administrative discretion for organizational planning is a clear professional intrusion without justification. The trend continues to be seen. Recent legislation such as HR 11023, the proposed Career Education Act, would have made the Career Education Officer responsible to the chief state school officer.

FEDERAL INFORMATION REPORTING IS SOMETIMES REQUIRED WITHOUT QUALIFICATION AS TO NEED AND PURPOSE

The fundamental reason for collecting data is to evaluate the effectiveness of education programs and to use the findings in strengthening and improving programs and policies. This should be done regularly at local, state, and federal levels. Data requirements of federal agencies should be based soundly on the usefulness of the data in making decisions to improve federally supported programs and policies. In a number of instances, it can be questioned whether such a sound relationship exists.

Both the beneficial effects and the detrimental effects of a mandated study are multiplied as they move from the federal agency to state agencies and then from state agencies to local agencies. This "pyramid effect" or "multiplier effect" is often not recognized fully when legislation is drafted or when regulations covering reports and studies are written.

Example 1: The record keeping requirements of federal regulations do not appear to serve any real educational function, as in Title I regulations which require a local education agency to file, index, and maintain readily reviewable records by individual schools on child enrollment, total salary portion based on longevity for each part-time staff member, work-sheets on full-time staff, amount of non-federal funds for full-time and part-time staff, amount for textbooks and library resources and instructional materials actually available during the current school year.

In the proposed regulations for education of the handicapped, the annual reporting of statistics in three time periods relating to facilities and personnel called for is massive, confusing, and of questionable value. Moreoever, it also requires each annual plan to include a breakdown of administrative services which can only lead to more work in describing the very act of describing the work.

The U.S. Office of Education complicates data collection when report forms are not made available until after the end of the fiscal year for which the report is due. This requires states and local education agencies to collect more data than is necessary, since they must anticipate what information will be required to be reported.

Example 2: The consequence of the administrative requirements placed on states has been complicated further by the excessive reports, notices, records, classifications, and accounting procedures which these laws require. The time required by state personnel to complete this documentation has seriously cut into the actual time spent on delivering services, and prevents the states from meeting their priorities. Clearly, the first priority of SEA's is to ensure quality education for the state's students. However, federal law and regulations impede this aim by requiring the submission of paperwork as a priority of state education agencies.

An overriding concern in collecting data is the fact that the same child may be counted repeatedly in several different ways depending on the type of program. For instance, Title I children are sometimes also

handicapped children. They also may be bilingual children, and at the same time may be gifted and talented, or neglected and delinquent. To further amplify this point, they may be Indian, Black, Oriental, or "other" who attend a parochial school. Depending on the federal programs, therefore, each aspect of these children's background is reported separately.

By requiring this volume of information, the federal government is not conceding the states' prerogative to count children in the way that reflects the state's greatest priorities and needs. The Office of Civil Rights requires in their "101-102's" extensive information without screening on the racial/ethnic breakdown of students, regardless of the racial/ethnic makeup of the particular school district. As a result, in districts where there are no minority students the reports must still be submitted, taking valuable staff time from teaching duties.

Not only do federal laws require multiple counts of various groups, but in many cases these reports are required more than once a year as in the case of the Education for All Handicapped Act:

> (3) The number of handicapped children receiving special education and related services in any fiscal year shall be equal to the average number of such children receiving special education and related services on October 1 and February 1 of the fiscal year preceeding the fiscal year for which the determination is made.

Example 3: In the case of the required records on pupil discipline, the Office of Civil Rights requires school districts to maintain information beyond that which is essential for the proper administration of the law.

In the case of ESEA Title IV-B, there is a tendency of the Office of Education to gather all possible data which interested parties might want in connection with this program. This results in an excessive volume of data without adequate justification for its usefulness. It was through an extensive effort on the part of CEIS that the amount of data in this case was controlled.

Very often regulations mandate reports containing specific data from local education agencies to state education agencies. If given the choice, SEA's would prefer to set their own requirements from LEA's, lessening the burden of paperwork and enabling them to collect data and meet their own program requirements. Under Title I regulations, LEA's annual comparability reporting requirements for all schools within the local districts are quite detailed and are set by federal regulation, not state experience.

Example 4: The U.S. Office of Education and the National Center for Educational Statistics generally consult representatives of the state education agencies in the planning of data collection activities. The National Institute of Education does an adequate job of this. But other federal agencies -- such as the Office of Early Childhood Development and the National Science Foundation -- have not tended to consult state representatives. A case in point is the recent nationwide survey of Science, Mathematics, and Social Studies which is being designed by the National Science Foundation, where state representatives were not consulted.

Example 5: Public Law 93-380 mandates five studies related to the area of bilingual education. These studies are being conducted variously by NCES, NIE, and USOE (OPBE). The agencies conducting these studies are not coordinated.

The same terms are defined differently by the directors of various mandated studies, with the result that confusion is created among state and local school officials in furnishing data. For example, reports required for the Office of Civil Rights define "individual sports" one way; the mandated study of athletic injuries under P. L. 93-380 defines it differently.

There are significant discrepancies among the various mandated studies and reports with respect to timing -- due dates, lead time to prepare for participation and/or data collection, periods of time covered, etc.

Additional problems in the area of mandated reports and studies stem from the widespread use of contractors in the design and implementation of the studies. This practice often results in a loss of control by the federal agency over the conduct of the study. Although there are many reputable contracting firms, there is often displayed a lack of understanding about school systems and protocol within the systems, as well as a general lack of sensitivity regarding public education. It appears that the almost universal use of contractors is often an inefficient practice, financially and qualitatively.

Another example is in the area of compensatory education programs. In some cases (particularly large urban districts), the same school districts are requested to participate in furnishing samples of students for two or more studies, conducted by different agencies. This results in confusion for the participating districts, since they do not understand the relationship among the studies and do not receive adequate explanations.

APPROVAL AND FUNDING OF PROGRAMS ARE DELAYED BY INEFFICIENT ADMINISTRATIVE PRACTICES

The purpose of rules and regulations is to make the administration of authorized programs as smooth and uncomplicated as possible. Frequently; however, problems within the federal agencies have serious consequences for the state and local agencies attempting to conform to federal program procedure. All too often, because of the inability of the Office of Education to meet its own schedules, adequate "lead time" for administrative planning is not available on the state level.

Example 1: Different application syles are in effect for various programs. This results in confusion on the part of state and local managers, and runs the danger of missing deadlines.

Example 2: At the time that the fiscal 1976 Annual Program Plan for Title IV, ESEA was being prepared, no final regulations had been published by the Office of Education and it was necessary to prepare this important plan on the basis of proposed regulations. Clearly, it was difficult for SEA's to meet federal requirements which had not yet been developed.

Example 3: Problems were encountered by SEA's and LEA's in connection with the recent changeover to the new federal fiscal year. Repeated attempts to secure clearly defined administrative practices to be followed by federal agencies were difficult to secure, late in delivery, and sometimes conflicting between program officers.

FEDERAL POLICIES AND REGULATIONS RESULT IN ADMINISTRATIVE CONFUSION AND INEFFICIENT STATE/LOCAL PRACTICES

It appears clear that federal policies should strengthen, support, and enhance the capabilities of state and local education agencies to administer their operations efficiently. In some cases this is not the result, especially where federal policies are either inconsistent with state law or are themselves poorly planned. Several examples can be cited.

Example 1: Sec. 613 (a) (4) (A) and (B) of P. L. 94-142 require the state to assure that adequate services are given to handicapped children enrolled in private schools. Many of these schools are not required to comply with state regulations and submit no data to the state education agency, making it impossible to allocate money on an equitable basis as required by statute. The law and regulations mandate that public school administrators plan with private school officials in developing programs over which public school officials have no authority. P. L. 94-142 also requires state education agencies to monitor programs for handicapped children conducted by other state agencies. In many cases, this will very likely be contrary to existing state law.

Example 2: Sec. 615 of the Education for All Handicapped Act requires a step-by-step delineation of the procedures for conducting hearings in the states, preempting established state statutes and policies. Many states already have state laws defining appropriate procedures for due process. This requirement is excessive on the part of the federal agency and burden-

some to the states. Such prescriptive requirements in this and in other education programs have no clear link to the objectives both the federal and state governments are attempting to achieve: quality education for all citizens.

Some parents in local school districts have been going directly to the Bureau of Education for the Handicapped for resolution of local problems; the Bureau of Education for the Handicapped has been responding by contacting state officials. This is clearly a distortion of the basic principle of orderly due process.

In addition, a factor which was common to many of the programs studied concerned the various interpretations and requirements communicated to the states by individual Office of Education personnel from state to state, individual to individual and from program officers to evaluation on-site teams. Several states have reported conflicting interpretations of the same regulations. Auditors, often unfamiliar with programs, are unyielding to program managers in making reasonable interpretations of laws. Clearly, the administration of programs on the state level would be made easier if federal requirements were uniform and if the states did not have to "second guess" the U.S. Office of Education according to the program officer assigned.

Example 3: In the regulations for Title IV ESEA, the amount of data required in order to prove maintenance of effort is excessive. Although the Education Amendments of 1976 included a provision which gave more.

flexibility to states in determining maintenance of effort, the formula, whether based on "per pupil" or aggregate expenditures, is still restrictive. Part B of Title IV ESEA is difficult to implement because adequate data to determine tax effort by local agencies and high cost children are not readily available.

Example 4: A number of special projects administered by the Bureau of Education for the Handicapped -- including the Special Education Materials Project, regional resource centers, and learning disabilities centers -- were initiated under one format and were subsequently changed as the programs grew. This resulted in communication and administrative problems for state education agencies participating in these programs, i.e., impact on manual and automated data storage and retrieval systems.

Example 5: Recent announcements in the Federal Register have indicated that additional responsibilities for the determination of compliance with Title VI of the Civil Rights Act are being placed on state and local education agencies. These requirements are not legislated but mandated by the Departments of Justice and Health, Education and Welfare. The Department of Justice proposes that "each state agency administering a continuing program which receives federal financial assistance shall be required to establish a Title VI compliance program for itself and other recipients which obtain federal assistance through it". The Department of Health, Education and Welfare requires local education agencies to assure that no discriminatory practices occur in a federally assisted program whether such

program is in a public or non-public school.

Example 6: Federal regulations pertaining to educational legislation are increasing in number every year, including amendments of previous amendments. It has become increasingly difficult to review the regulations for administrative purposes.

Example 7: It is clear that P. L. 93-380 was an attempt at accountability for 11 years of operation of Title I programs. There are six separate Title I studies, including a 3-year NIE study at $15 million, and a 4-year study on the sustaining effects of compensatory education, reduced from $19 million to $13 million. Specific objectives of many of the mandated sutides are not made clear to school districts asked to participate; it sometimes occurs that a school district participating in two or more separate studies is unable to understand why two studies are needed to serve what appears to be the same outcome. The proliferation of Title I evaluation studies is a good example of this.

As a result of Congress' desire for achievement data, some very real burdens appear at the state and local education agency level. For example:

1. The same school districts (especially large districts) i.e. (Los Angeles, Philadelphia) keep turning up in the samples of study after study, with the result that a small number of districts are asked to bear an inordinate share of the burden. It appears federal agencies or their contractors drawing samples for various studies are not aware of the extent to which the districts they draw in their examples are also being asked,

to participate in other studies, often supplying identical information (for different requests), depending on who is making the request.

2. The Office of Planning, Budgeting and Evaluation in the Office of Education recently published proposed regulations for evaluation procedures. These regulations, if not withdrawn, would effectively nullify much local/state flexibility in program evaluation by mandating specific evaluation techniques. These proposed regulations were developed with little input from SEAs or LEAs and the perceived necessity for them is quite unclear since there is little evidence of recipient non-cooperation in OPBE evaluations. Here is an excellent example of the executive branch expanding its control through regulations, which may impede effective program evaluation which will provide information useful to program management at the state and local level.

Example 8: Section 512 of P.L. 93-380 is a mandated reporting system on the use of federal funds. This system requires annual reporting as follows:

1. For the first preceeding year, a list of all school grants and contracts, the total amount of funds for each program, and the Act or Acts from which these funds were made available.

2. For the second preceeding year a list from each LEA of the amount of federal funds and purposes for which they were spent, and a statistical report on the individuals served or affected by these programs.

It would appear that this is an example of Congressional frustration in trying to get a handle on where federal funds go. End of year program reporting, which is in addition to the 512 system, should supply this information. This represents a tremendous duplication of effort at the state level.

Studies to be conducted by federal agencies consume resources of state and local agencies which are asked to participate in the national study by providing data or by assisting in the research procedures to be carried out. For example: school districts asked to participate in the Safe Schools Study did not receive any assistance in resources, although Sec. 825 of P.L. 93-380 states that the Secretary "may reimburse each state educational agency for the amount of expenses incurred by it in meeting the requests of the Secretary under this Section."

Problems are also encountered in the assignment by the Executive branch of several different agencies to conduct studies. For example, in P.L. 93-380, a Safe Schools Study was mandated. Subsequently, this was divided into two parts, one to be done by the National Center for Educational Statistics (NCES) and the other by the National Institute of Education (NIE). This results in confusion at the state and local level when confronted with two studies on the same subject. It has been a consistent policy of the CCSSO that all federal data collection which has an impact on SEAs and LEAs should be coordinated through NCES. This does not imply that NCES conduct all studies, only that there be a central coordinating unit for the entire federal government in the area of educational data collection.

Example 9: Certain federal agencies appear to be inclined to use data collection requirements for school districts as a device for raising awareness of social issues rather than for purposes of collecting data for use in conducting authorized studies consistent with legislative authorization.

In viewing the federal efforts in the area of civil rights legislation and subsequent enforcement/compliance activities, it is necessary to define a starting point. It has been suggested that the federal government initiated civil rights activity as a direct result of a reluctance at the state and local government levels to take the lead in this area. Clearly no rational state or local authority can disagree with the federal government's initiative in the enforcement of these laws, but there are serious and counterproductive implications in the design and methodology of this enforcement in terms of excessive paperwork, feasibility of administration, and prescriptive rather than results-oriented activity.

The clearest example of this is the discipline record keeping requirements leveled on <u>all</u> school districts (regardless of racial/ethnic composition) by the Office of Civil Rights. These requirements were vague, much too comprehensive, and represented an illogical solution to a very real problem. The underlying supposition appears to be that documentation of a problem is tantamount to solution.

School districts recently, through a White House decision, are being forced to provide information through OCR's 101-102 surveys. These surveys

which request a wealth of racial, sex and handicapped data on staff and students (with no screening of questions) in public school systems, are poorly designed, burdensome reports. SEAs and LEAs are not reluctant to supply data when it is requested in a reasonable format with a reasonable amount of lead time for preparation. This essentially is a management problem at OCR, and not a problem of non-cooperation or non-compliance on the part of the school systems.

OCR needs to be aware of the negative connotations of their reporting requirements. Without clearly communicated goals for their data collection or record keeping requirements, the whole process becomes threatening and unproductive.

Example 10: The NIE Safe Schools Study, which involves interviews at the student level, has created some concern that the schools are being held responsible for what essentially is a societal problem, i.e., crime in the schools. This does not suggest that this is not a legitimate area for federal investigation, but it does call for extreme sensitivity and care in the handling of such data, and for state and local involvement in the design and implementation of such studies.

IN SOME PROGRAMS FEDERAL AGENCIES DEAL DIRECTLY WITH SCHOOL DISTRICTS, BYPASSING STATE EDUCATION AGENCIES

In some cases there has been a tendency for federal agencies to deal directly with school districts without adequate communication with, and involvement of, the state education agency.

Bilingual education programs under ESEA VII are funded directly by the USOE. Emergency School Assistance Act funds flow directly to school districts, sometimes with too little communication with state education agencies. Project Follow Through is another example. In some cases this subjects a school district to complying with two different and often conflicting policy positions promulgated by state and federal authorities. In view of the Constitutional responsibility of state government to manage and coordinate all public education within the state, these instances of bypassing state agencies create major impediments to effective management of educational programs.

AUDITS CONDUCTED BY FEDERAL AGENCIES ARE SOMETIMES LATE AND NOT CONSISTENT WITH THE POLICIES FOR PLANNING AND CONDUCTING PROGRAMS

The conduct of audits are necessary to insure compliance with sound operating procedures. A sound fiscal audit is an essential part of an accountability system. To be most useful, however, such audits must be fair and timely.

Audits are frequently conducted three or four years after the period of operation under consideration, and in a few cases they go back seven of eight years. When audits are conducted, the auditors use the current regulations in effect, never taking into account the revision of regulations in effect for the years covered by the audit.

SUGGESTIONS AND RECOMMENDATIONS

Based on the findings of this study and additional state experience, the Council of Chief State School Officers has developed some recommendations for solutions to these problems.

LEGISLATION

1. All efforts should be made to provide input from appropriate state officials, to Congressional committees when proposed legislation is under consideration throughout the legislative process.

2. In the event a new program or a new consolidation of programs is planned, the legislation should provide for a minimum of one (1) program year lead time prior to the effective date of implementation. If further consolidation of programs is planned, there should not be partial implementation, which results in overlap of categorical and consolidation programs in the same fiscal year.

3. The "Compilation of Federal Education Laws" published February 1975 has been of such value to state and local education agencies, and others, that CCSSO recommends to Congress to have it published every other year, beginning in 1977.

4. Every future piece of federal legislation should contain provisions for monitoring of its own operations and for revision to ensure consistency of regulations with the law.

REGULATIONS

1. Recent actions by the Department of Health, Education and Welfare to make a more vigorous effort to "ask the people of this country what they think we should do" through earlier distribution of proposed regulations is commendable. However, in the process of writing regulations, advice should be sought from general administrative personnel in the states, not only from advocates of specific programs or representatives of special interest groups.

2. Existing regulations should be reviewed periodically by state education agencies and by the Department of Health, Education and Welfare. They should be reformulated whenever they are found to exceed the law as amended. In administering federal education law, the Commissioner should take his/her direction from the desired result expressed in the legislation. He/she is expected to assure the result, respecting at all times the individual statutes, practices, and procedures of each of the states. Regulations should be written using only the law and its legislative history.

3. The state education agency should be given full responsibility and held accountable for comparability monitoring and enforcement. SEAs should immediately solicit a barrage of comments from LEAs and others documenting first to the Office of Education and subsequently to Congress that the regulations induce too many paperwork requirements and are too prescriptive.

4. Efforts should be made by USOE to establish criteria and procedures to insure a uniform interpretation of regulations by federal program personnel working with state and local agencies.

5. Final regulations, consistent with the legislation, should be issued before states are required to prepare and submit plans for program operations and expenditures.

6. In cases where federal regulations exceed state statutes or are contrary to them, the federal statute should provide that state law take precedence over federal regulations.

APPLICATIONS FROM SCHOOL DISTRICTS

1. New federal legislation should not stipulate the state application process for local education agencies, but be written so that the states handle the state/local relationship.

2. The maintenance of effort provisions in federal education legislation should undergo a thorough review and analysis in order to more clearly define the puppose of this provision and the record keeping which would be required.

3. New legislation should allow for the submission of a multi-year program plan with an annual application, or to permit such multi-year program plans with an annual application providing the necessary updated data.

A multi-vear (3 vear) program plan would permit:

1. More comprehensive needs assesment;
2. More sophisticated developemnt of a program of services;
3. A longer time frame for achieving objectives;
4. More realistic evaluation of the design and achievements.

Annual reports could still be made of accomplishment and the district could at its option alter or resubmit its plan as needed.

EVALUATION STUDIES AND DATA COLLECTION

1. The basic mechanism for information flow and evaluation should be decided at the time that a law is passed, and not leave this to interpretation through regulations and guidelines.

2. Requirements for evaluation of programs should be specified at the time a federal contract or grant is awarded to facilitate planning of the program. The evaluation design should involve viewpoints of fund recipients, and should include an estimate of the cost and source of funds for evaluation.

3. Congress should consult with federal, state and local program officers to assess the impact, burden, and costs of new mandated surveys in pending legislation. State and local education agencies should be reimbursed for their costs in carrying out mandated studies.

4. Legislative language should be tightened up in reference to information requirements. Coordination of all education data collection for the federal government should occur in one agency, and the Council recommends that this be the National Center for Education Statistics.

5. Follow-up efforts to the Commission on Federal Paperwork should be carried out through the design and conduct of an "impact analysis" for each study or report proposed to be established through new or continuing federal legislation. Such an analysis should explore: (a) the costs to state and local agencies; (b) the possible detrimental effects (especially anything that is counter-productive to on-going state efforts) of the proposed study; (c) types of data or collection methods that might constitute sensitive areas for state or local agencies; (d) administrative burden for state and local staff; (e) consistency of definitions used in relation to definitions used in other reports or studies; (f) and/or the objectives of the study and expected beneficial effects which the study or report is likely to contribute to the legislatively defined purposes of the program. Such an analysis should be required for any federal agency proposing a design for a study or report, rather than being limited to HEW initiated studies that are now reviewed by the Office of Management and Budget.

ADVISORY COUNCILS

1. Any regulations concerning advisory councils should clearly specify their functions as being supportive and advisory rather than administrative. The purpose of advisory councils is to bring a broader perspective to programs

and not to administer a staff or have governance functions. Advisory councils should be set up in such a way that they cooperate with programs rather than fragment the required SEA administrative and governing functions to implement the program.

AVOIDING BYPASSING OF STATE EDUCATION AGENCIES

1. Federal legislation should provide for the appropriate state agency to administer it, and not provide for direct relations between the federal government and districts; no funds should flow directly from federal agencies to school districts, but should flow through the state education agency